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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

APR 28 2000

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

LUIS CARLOS MARTINEZ-HERNANDEZ,

Defendant-Movant.

No. CIV-00-0491 MV/DJS
CR-95-0209 MV

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte for preliminary consideration of Defendant's motion to reduce sentence under 28 U.S.C. § 2255 filed April 6, 2000. Rule 4(b) Governing Section 2255 Proceedings. Defendant claims his sentence violates certain constitutional protections and resulted from ineffective assistance of counsel. He asks for a two-point reduction in the calculation of his sentence. The motion will be dismissed as barred under the one-year period of limitations in 28 U.S.C. § 2255.

The docket indicates judgment was entered on Defendant's conviction December 8, 1995. Defendant did not appeal his conviction or sentence. The motion was filed April 6, 2000, almost four years after the one-year limitation period was enacted. *Cf. United States v. Simmonds*, 111 F.3d 737, 745-46 (10th Cir. 1997) (allowing reasonable time up to one year for filing § 2255 motion attacking conviction that became final after enactment). The motion was not filed within the mandatory one-year limitation period and is not timely. Furthermore, the motion makes no allegation implicating the provisions in § 2255 which allow restarting the limitation period after a conviction becomes final. Defendant has had abundant time to file his motion, and he is not entitled to relief. Rule 4(b). The motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 filed April 6, 2000, is DISMISSED with prejudice, and this civil proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE